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FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER  
LLP  
1300 I STREET, NW  
WASHINGTON, DC 20005

[REDACTED] EXAMINER

COULTER, KENNETH R

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2141

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. <b>09/776,780</b>	Applicant(s) <b>Zisapel et al.</b>
	Examiner <b>Kenneth R. Coulter</b>	Art Unit <b>2141</b>
		
<i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>		
<b>Period for Reply</b> A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.		
- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).		
<b>Status</b>		
1) <input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>Apr 10, 2003 (Amendment B; paper #12)</u>		
2a)	<input checked="" type="checkbox"/> This action is FINAL.	2b) <input type="checkbox"/> This action is non-final.
3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11; 453 O.G. 213.		
<b>Disposition of Claims</b>		
4) <input checked="" type="checkbox"/> Claim(s) <u>6, 7, 10, 11, 13, 18-21, 24-26, and 28</u> is/are pending in the application.		
4a) Of the above, claim(s) _____ is/are withdrawn from consideration.		
5) <input checked="" type="checkbox"/> Claim(s) <u>13 and 20</u> is/are allowed.		
6) <input checked="" type="checkbox"/> Claim(s) <u>6, 7, 10, 11, 18, 19, 21, 24-26, and 28</u> is/are rejected.		
7) <input type="checkbox"/> Claim(s) _____ is/are objected to.		
8) <input type="checkbox"/> Claims _____ are subject to restriction and/or election requirement.		
<b>Application Papers</b>		
9) <input type="checkbox"/> The specification is objected to by the Examiner.		
10) <input type="checkbox"/> The drawing(s) filed on _____ is/are a) <input type="checkbox"/> accepted or b) <input type="checkbox"/> objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).		
11) <input type="checkbox"/> The proposed drawing correction filed on _____ is: a) <input type="checkbox"/> approved b) <input type="checkbox"/> disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action.		
12) <input type="checkbox"/> The oath or declaration is objected to by the Examiner.		
<b>Priority under 35 U.S.C. §§ 119 and 120</b>		
13) <input type="checkbox"/> Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) <input type="checkbox"/> All b) <input type="checkbox"/> Some* c) <input type="checkbox"/> None of: 1. <input type="checkbox"/> Certified copies of the priority documents have been received. 2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____. 3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). *See the attached detailed Office action for a list of the certified copies not received.		
14) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e). a) <input type="checkbox"/> The translation of the foreign language provisional application has been received.		
15) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.		
<b>Attachment(s)</b>		
1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)		
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)		
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____		
4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____		
5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)		
6) <input type="checkbox"/> Other: _____		

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## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

- (e) the invention was described in-
  - (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or
  - (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

2. Claims 6, 7, 18, 21, 24 - 26, and 28 are rejected under 35 U.S.C. 102(e) as being disclosed by Rochberger et al. (U.S. Pat. No. 6,205,146) (Method of Dynamically Routing to a Well Known Address in a Network).

2.1 Regarding claim 6, Rochberger discloses a method for load balancing requests on a network, the method comprising:

determining the *network proximity* of a requestor with respect to each of at least two servers located at different geographical locations (Abstract; col. 4, line 64 - col. 5, line 8; col. 5, line 52 - col. 6, line 6);

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designating a *closest* one of said at least two servers by ranking said at least two servers by network proximity (Abstract; col. 4, line 64 - col. 5, line 8; col. 5, line 52 - col. 6, line 6); and directing requests from said requestor to one of said at least two servers by having greatest network proximity (Abstract; col. 4, line 64 - col. 5, line 8; col. 5, line 52 - col. 6, line 6), said network proximity being determined by at least one of latency and **number of hops** between said requestor and each of said at least two servers (Abstract; col. 4, line 64 - col. 5, line 8; col. 5, line 52 - col. 6, line 6); said method further comprising directing additional requests from any source having a subnet that is the same as the subnet of said requestor to said closest server (Abstract; col. 4, line 64 - col. 5, line 8; col. 5, line 52 - col. 6, line 6).

2.2 Regarding claim 7, Rochberger discloses

determining the *network proximity* of a requestor with respect to each of at least two servers located at different geographical locations (Abstract; col. 4, line 64 - col. 5, line 8; col. 5, line 52 - col. 6, line 6); designating a *closest* one of said at least two servers by ranking said at least two servers by network proximity (Abstract; col. 4, line 64 - col. 5, line 8; col. 5, line 52 - col. 6, line 6); and directing requests from said requestor to one of said at least two servers by having greatest network proximity (Abstract; col. 4, line 64 - col. 5, line 8; col. 5, line 52 - col. 6, line 6),

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    said network proximity being determined by at least one of latency and **number of hops** between said requestor and each of said at least two servers (Abstract; col. 4, line 64 - col. 5, line 8; col. 5, line 52 - col. 6, line 6);

    monitoring the current load of each of said servers (Abstract; col. 4, line 64 - col. 5, line 8; col. 5, line 52 - col. 6, line 6); and

    directing request from said requestor to one of said at least two servers when the current load of said one of said at least two servers is less than the current load of every other of said at least two servers (Abstract; col. 4, line 64 - col. 5, line 8; col. 5, line 52 - col. 6, line 6).

2.3     Regarding claims 18, 21, 24 - 26, and 28, the rejection of claims 6 and 7 (paragraphs 2.1 and 2.2) applies fully.

3.     Claims 6, 7, 10, 11, 18, 19, 21, 24 - 26, and 28 are rejected under 35 U.S.C. 102(e) as being disclosed by Bare (U.S. Pat. No. 6,493,318) (Cost Propagation Switch Protocols).

3.1     Regarding claim 6, Bare discloses a method for load balancing requests on a network, the method comprising:

    determining the *network proximity* of a requestor with respect to each of at least two servers located at different geographical locations (Fig. 11; col. 11, lines 6 - 11; col. 6, lines 62 - 67; col. 7, lines 11 - 25);

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designating a *closest* one of said at least two servers by ranking said at least two servers by network proximity (Fig. 11; col. 11, lines 6 - 11; col. 6, lines 62 - 67; col. 7, lines 11 - 25); and directing requests from said requestor to one of said at least two servers by having greatest network proximity (Fig. 11; col. 11, lines 6 - 11; col. 6, lines 62 - 67; col. 7, lines 11 - 25),

said network proximity being determined by at least one of **latency** and **number of hops** between said requestor and each of said at least two servers (Fig. 11; col. 11, lines 6 - 11; col. 6, lines 62 - 67; col. 7, lines 11 - 25);

said method further comprising directing additional requests from any source having a subnet that is the same as the subnet of said requestor to said closest server (Fig. 11; col. 11, lines 6 - 11; col. 6, lines 62 - 67; col. 7, lines 11 - 25).

### 3.2 Regarding claim 7, Bare discloses

determining the *network proximity* of a requestor with respect to each of at least two servers located at different geographical locations (Fig. 11; col. 11, lines 6 - 11; col. 6, lines 62 - 67; col. 7, lines 11 - 25);

designating a *closest* one of said at least two servers by ranking said at least two servers by network proximity (Fig. 11; col. 11, lines 6 - 11; col. 6, lines 62 - 67; col. 7, lines 11 - 25); and

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directing requests from said requestor to one of said at least two servers by having greatest network proximity (Fig. 11; col. 11, lines 6 - 11; col. 6, lines 62 - 67; col. 7, lines 11 - 25),

said network proximity being determined by at least one of **latency** and **number of hops** between said requestor and each of said at least two servers (Fig. 11; col. 11, lines 6 - 11; col. 6, lines 62 - 67; col. 7, lines 11 - 25);

monitoring the current load of each of said servers (Fig. 11; col. 11, lines 6 - 11; col. 6, lines 62 - 67; col. 7, lines 11 - 25); and

directing request from said requestor to one of said at least two servers when the current load of said one of said at least two servers is less than the current load of every other of said at least two servers (Fig. 11; col. 11, lines 6 - 11; col. 6, lines 62 - 67; col. 7, lines 11 - 25).

3.3 Per claims 10 and 11, these specific features are clearly disclosed by Bare (Fig. 11; col. 11, lines 6 - 11; col. 6, lines 62 - 67; col. 7, lines 11 - 25).

3.4 Regarding claims 18, 19, 21, 24 - 26, and 28, the rejection of claims 6, 7, 10, and 11 (paragraphs 3.1 - 3.3) applies fully.

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4. Claims 6, 7, 10, 11, 18, 19, 21, 24 - 26, and 28 are rejected under 35 U.S.C. 102(e) as being disclosed by Kenner et al. (U.S. Pat. No. 6,112,239) (System and Method for Server-Side Optimization of Data Delivery on a Distributed Computer Network).

4.1 Regarding claim 6, Kenner discloses a method for load balancing requests on a network, the method comprising:

determining the *network proximity* of a requestor with respect to each of at least two servers located at different geographical locations (Abstract; col. 7, line 42 - col. 8, line 6; col. 13, lines 16 - 35);

designating a *closest* one of said at least two servers by ranking said at least two servers by network proximity (Abstract; col. 7, line 42 - col. 8, line 6; col. 13, lines 16 - 35); and

directing requests from said requestor to one of said at least two servers by having greatest network proximity (Abstract; col. 7, line 42 - col. 8, line 6; col. 13, lines 16 - 35),

said network proximity being determined by at least one of latency and **number of hops** between said requestor and each of said at least two servers (Abstract; col. 7, line 42 - col. 8, line 6; col. 13, lines 16 - 35);

said method further comprising directing additional requests from any source having a subnet that is the same as the subnet of said requestor to said closest server (Abstract; col. 7, line 42 - col. 8, line 6; col. 13, lines 16 - 35).

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4.2 Regarding claim 7, Kenner discloses

determining the *network proximity* of a requestor with respect to each of at least two servers located at different geographical locations (Abstract; col. 7, line 42 - col. 8, line 6; col. 13, lines 16 - 35);

designating a *closest* one of said at least two servers by ranking said at least two servers by network proximity (Abstract; col. 7, line 42 - col. 8, line 6; col. 13, lines 16 - 35); and

directing requests from said requestor to one of said at least two servers by having greatest network proximity (Abstract; col. 7, line 42 - col. 8, line 6; col. 13, lines 16 - 35), said network proximity being determined by at least one of latency and **number of hops** between said requestor and each of said at least two servers (Abstract; col. 7, line 42 - col. 8, line 6; col. 13, lines 16 - 35);

monitoring the current load of each of said servers (Abstract; col. 7, line 42 - col. 8, line 6; col. 13, lines 16 - 35); and

directing request from said requestor to one of said at least two servers when the current load of said one of said at least two servers is less than the current load of every other of said at least two servers (Abstract; col. 7, line 42 - col. 8, line 6; col. 13, lines 16 - 35).

4.3 Per claims 10 and 11, these specific features are clearly disclosed by Kenner (Abstract; col. 7, line 42 - col. 8, line 6; col. 13, lines 16 - 35).

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4.4 Regarding claims 18, 19, 21, 24 - 26, and 28, the rejection of claims 6, 7, 10, and 11 (paragraphs 4.1 - 4.3) applies fully.

*Response to Arguments*

5. Applicant's arguments filed 4/10/03 have been fully considered but they are not persuasive.

Applicant states that Rochberger does not show dealing with additional requests as recited in claim 6.

Examiner disagrees.

Rochberger inherently deals with additional requests from any source (Abstract; col. 4, line 64 - col. 5, line 8; col. 5, line 52 - col. 6, line 6).

Applicant states that Rochberger does not show monitoring current load on servers as claimed in claim 7, but rather monitors link capacity.

Examiner disagrees.

Rochberger discloses a "link sum" (Abstract) which is equivalent to the current load on servers.

Applicant states that Rochberger does not show or suggest network proximity being determined by combinations of at least two of the recited parameters in claims 18, 21, and 24 - 26.

Examiner disagrees.

The number of hops and latency are directly proportional.

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Applicant states that Bare relates to switch-to-switch communication and does not relate at all to client requests.

Examiner disagrees.

An equivalent “request bit set in the packet type” is disclosed in Bare (col. 19, line 18).

Applicant states that Kenner does not show dealing with additional requests as recited in claim 6.

Examiner disagrees.

Kenner inherently deals with additional requests from any source (Abstract; col. 7, line 42 - col. 8, line 6; col. 13, lines 16 - 35).

Applicant states that Kenner does not show monitoring current load on servers or show network proximity being determined by combinations of at least two of the recited parameters in claims 10, 18, 19, 21, and 24 - 26.

Examiner disagrees.

The monitoring of current load on servers is inherent in Kenner in order for Kenner to function.

The number of hops and latency are directly proportional.

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*Allowable Subject Matter*

6. Claims 13 and 20 are allowed.

*Conclusion*

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth Coulter whose telephone number is (703) 305-8447.

KENNETH R. COULTER  
PRIMARY EXAMINER  
*Kenneth Coulter*

krc

July 28, 2003